

The Role of the School Trustee

The Legal Environment of Elementary and Secondary Education in Ontario

The Function of the Publicly Supported Elementary and Secondary School System

The Individual Trustee

Conclusions and Questions

(1) General

(2) School Boards

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Report of the Committee to Examine the Role of The School Trustee

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FOREWORD

Over the years since The Education Act, 1974 was passed by the Ontario Legislature, a number of concerns have been expressed concerning the role, powers and duties of school boards and trustees by organizations and individuals interested in the elementary and secondary education system in Ontario.

After a meeting on February 18, 1981, with the Ontario School Trustees' Council, the Deputy Minister of Education struck a committee of twelve members of representative trustees and parents from the various trustee and parent-teacher/home and school organizations in the province along with Ministry officials to consider a number of these issues. The task of the committee was to prepare a discussion paper that would address some of the issues raised in section 5.13 (p. 53) of the Ministry document "Issues and Directions" and a number of closely related items, specifically,

- the role, powers and duties of the trustees;
- the feasibility of establishing school committees of trustees and parents with powers defined in legislation to share in the governance of individual schools;
- the qualifications of trustees (including the conflict of interest issue);
- the remuneration of trustees;
- any other matters which in the committee's opinion are closely related to any of the above.

The committee has produced the following document for public discussion and response on these important topics. To facilitate public response, a separate response sheet, with the committee's conclusions and questions listed in brief form, accompanies the discussion paper.

The committee's report does not deal with the Metropolitan Toronto Board of Education, those boards authorized under sections 67 and 68 of The Education Act, 1974, District School Area boards or the Isolate Roman Catholic Separate School boards because of the particular structure of these boards or the legislation governing them. Neither does it address matters relating to Indian representatives on school boards. Issues related to these components of the Ontario education system need to be dealt with in light of their specific circumstances once overall provincial decisions have been made.

References are made throughout the document to The Education Act, 1974 and to other acts. As a result of the regular republishing every ten years of all Ontario statutes, which will take place in 1981, official titles of acts and section numbers within them may be modified. All references in this document are those which existed at the time of the committee's work.

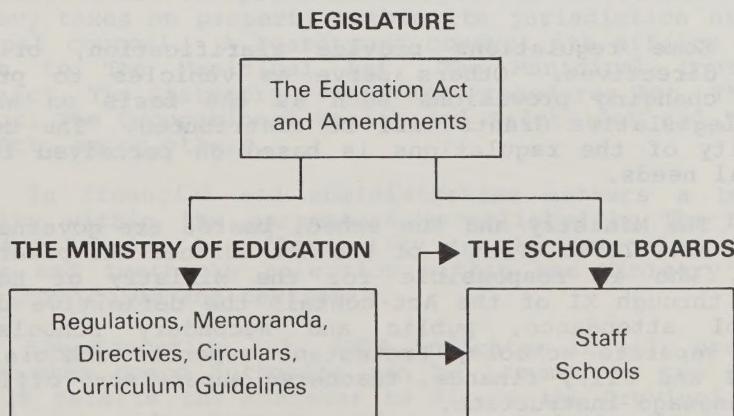
The committee members have appreciated the opportunity to participate in this review.

The Legal Governance of Elementary and Secondary Education in Ontario

Before 1816 in what is now Ontario there were no formal local organizations to administer and take responsibility for the schools supported by public funding. In that year, however, The Common School Act provided for the election of three "fit and discreet persons" as trustees. The trustees were responsible for the hiring of teachers and the prescribing of fees to be paid by parents to supplement government grants in towns, townships, villages or other places with an enrolment of a minimum of twenty pupils in a school. The Act also provided for the appointment of "five discreet persons" to district boards of education to distribute the grants voted by the Legislature. The trustees reported to the district board every three months on the textbooks used and once a year on the state of the school.

Since 1816, control of the elementary, and, later of the secondary, school system has been vested in locally elected trustees operating within guidelines established by government legislation. Section 93 of the British North America Act of 1867 (see Appendix B) permitted continuation of the system so that today education in Ontario is governed by legislation enacted by the province.

The relationships among the Legislature, the Ministry of Education and the boards can be represented diagrammatically as follows:



School boards are corporate legal entities under The Education Act, 1974. Section 1(1)3 defines a "board" as "a board of education, public school board, secondary school board, Roman Catholic separate school board or Protestant separate school board", and section 1(1)4 states further that a "board of education includes a divisional board".

The Education Act, 1974, consolidated five acts, namely, The Ministry of Education Act, The Public Schools Act, The Schools Administration Act, The Secondary Schools and Boards of Education Act and The Separate Schools Act. The proposed act was first presented in 1972 and became law on the first day of January, 1975.

The Act, being a creation of the Legislature, is the ultimate authority for the powers granted to the Minister of Education and the boards. When changes are required it is amended as it was in 1975, 1976, 1978, 1979 and 1980. The amendment passed in 1980, commonly referred to as Bill 82, which legislated the mandatory provision of special education, is a prime example of the far-reaching importance of amendments to the Act.

The Education Act, 1974 is extended by "regulations" which are authorized by, and carry the same weight as the Act. Regulations are filed and published under the Regulations Act which defines a regulation as follows:

"Regulation" means a regulation, rule, order or by-law of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council ...'

Some regulations provide clarification, or outline detailed directives. Others serve as vehicles to promulgate annually changing provisions such as the basis on which the General Legislative Grants will be distributed. The degree of specificity of the regulations is based on perceived local and provincial needs.

The Ministry and the school boards are governed by The Education Act, 1974. Part I of the Act defines the powers of the Minister, who is responsible for the Ministry of Education. Parts II through XI of the Act contain the definitive direction on school attendance, public and secondary schools, Roman Catholic separate schools, Protestant separate schools, boards (Parts VI and VII), finance, teachers, supervisory officers and French language instruction.

Section 146 of The Education Act, 1974 prescribes the mandatory duties and responsibilities of a board. The remaining sections of Part VI are permissive in that the powers of a board

described therein are either preceded by the word "may" or the word is included in the text (see Appendix C). In addition to these sections, references to board responsibilities appear throughout the Act, and for this reason the Act should be read in its entirety.

In section 146 a board is directed that it shall, among other obligations, provide instruction and adequate accommodation during each school year for pupils under its jurisdiction and keep the school buildings and premises in proper repair and in proper sanitary condition. A board shall ensure that every school under its charge is conducted in accordance with The Education Act, 1974 and the regulations, appoint principals and teachers, provide textbooks and transmit to the Minister all reports and returns required under the Act and the regulations.

The powers to appoint advisory committees, hire or appoint staff, borrow money through the issue of debentures, build schools, provide instructions within curriculum guidelines, etc., are carefully presented in the Act to allow boards the flexibility, within government policy, to provide the optimum educational services to the people of Ontario.

For the most part the responsibilities of a board, within the scope of the Act, are similar to those of a board of directors in any service corporation. As a corporate body, a board employs staff, manages property, borrows funds, negotiates salaries and must abide by federal and provincial legislation. In addition, it has the power to charge fees in certain instances and to levy taxes on property within its jurisdiction similar to a municipal council. A board must conduct its affairs with due attention to The Municipal Act, The Municipal Conflict of Interest Act, The Statutory Powers and Procedures Act, The Public Health Act, The Occupational Health and Safety Act and The Child Welfare Act, among others.

In financial and administrative matters a board has flexibility within the parameters established by The Education Act, 1974. It also has flexibility in the selection of course offerings and textbooks selection within the Ministry's guidelines on curriculum and textbooks.

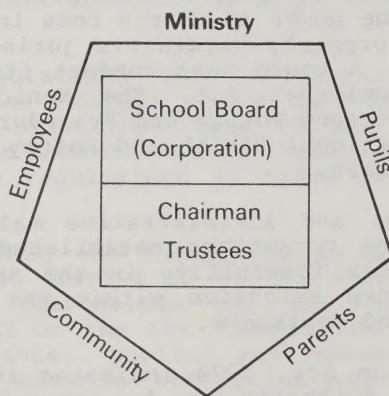
The Education Act, 1974 indicates in only one section instances when board authority can be assumed by the Ministry. Section 28 permits the Minister to direct the Provincial School Attendance Counsellor to assume the powers of the board where it appears that "the board of a district school area is not providing accommodation or instruction for its resident pupils ..., has neglected or failed to raise funds ..., or has in other respects failed to comply with this Act and the regulations, or that the election of members of the board has been neglected and no regular board is in existence ...".

The Operation of the Publicly Supported Elementary and Secondary School Systems in Ontario

Publicly supported elementary and secondary education has evolved in Ontario through the various actions of the Legislature and the school boards based on shared responsibility between the provincial administration (the Minister and the Ministry of Education) and the local school boards. Both the provincial and local administrations derive their powers, duties, and responsibilities from the acts passed by the Legislature and as a consequence neither has an exclusive role in education. This reality must be recognized in considering the roles, powers, and duties of trustees. The importance of the role of the school boards in the educational systems of Ontario cannot be over emphasized as they ensure that the needs of a local nature and the requirements of provincial standards are melded into a harmonious program of instruction.

School Board Operations

The many demands placed on the local school board could be represented schematically in the following way:



Each school board functions in three broad areas: the provision of curriculum services, the provision of facilities and the allocation of financial resources.

(a) Provision of curriculum services. The general goals of education are outlined in the Ministry curriculum guidelines. The school board's task is to help the schools in its jurisdiction, through the professional staff, to develop, from the guidelines, courses of study that are specifically designed to meet local needs and circumstances. In a wider context, the function of school boards is to assess and meet the educational needs of the people in the community. These needs include language instruction, classes for gifted or handicapped children, summer schools, continuing education and many other programs.

(b) The provision of facilities. In order to provide appropriate facilities school boards plan, design and build schools. They must provide for professional, technical and support staff to ensure that instructional programmes are delivered in the best possible way. This process is particularly complex at a time when declining enrolment and shifting urban and suburban populations necessitate staff reductions, space sharing and the leasing and selling of schools and support facilities.

(c) The allocation of financial resources. The allocation of financial resources to meet a great many diverse needs and challenges is a major responsibility of trustees. Each school board in Ontario is required to raise a percentage of the money needed to operate the schools under its jurisdiction and to allocate these funds in a way that will meet both provincial and local objectives within the area served by the board. The money is raised through local property taxes collected on the board's behalf by the municipality, with the balance provided in the form of general legislative grants and distributed by the Ministry of Education. School boards with a large local tax base are required to raise a significant portion, if not the major part, of the funds needed to maintain the school system. School boards with a smaller tax base or special needs receive a larger proportional grant from the province.

The current funding system is so arranged that all school boards levy the same equalized mill rate with respect to the expenditures "recognized" by the province, regardless of the size of the local assessment base. Provincial grants make up the difference between what the common mill rate raises in each jurisdiction and the amount recognized in the provincial funding formula. Many boards spend more than the "recognized" amount. In general these funds must be entirely raised by taxation on the local assessment.

(d) Dealing with Issues. All of the major issues in education are perceived to be of both provincial and local concern. To be effective both the Ministry of Education and the school boards require ongoing means of communication with the public. It is essential that both the school boards and the Ministry define how they attempt to reflect accurately the needs of the public and it is equally important that the school boards and the Ministry share information and future plans.

For the Minister and officials of the Ministry of Education, the gathering of information and views is a major activity systematically conducted, in an effort to develop provincial policies that respond to local and provincial needs, recognizing the opinions and positions of the affected groups. One of the ways in which this occurs is through information and representations that the Minister of Education receives from parents, teachers, ratepayers, members of the Legislature, and other interested groups and individuals.

The Ministry also identifies provincial issues in a number of ways through its six regional offices. The regional education councils and the regional curriculum councils, composed of senior board officials and Ministry staff, meet regularly in each region to exchange information on such matters as finances and the implementation of curriculum. The deliberations of each council are forwarded to the Ministry for follow up and response. Ministry program-review teams, French language consultative teams and special education consultative teams visit boards and schools on a regular basis. In addition, the regional offices provide a liaison officer to each school board in Ontario to maintain effective communication with the school boards' administration officials. For small boards, chiefly in remote areas in the north, the Ministry regional offices supply the supervisory services that are carried out in a larger board by the board's own officials.

School boards have also established various means to ensure strengthened communication with the public and interest groups in order to respond more effectively both to the demands of the community and to the provincial goals of education. At the local level, individual boards establish particular means suited to their jurisdiction to communicate with the public and to discuss issues. It is important that all the interested groups understand the nature and the effect of their particular demands upon a school board. A school board must represent the views and needs of the community as a whole.

In addition to structures individual school boards use to discuss issues locally, school boards have formed trustee associations based on their common interests. There are now five such associations:

- L'Association française des Conseils Scolaires de l'Ontario
- The Association of Large School Boards of Ontario
- The Northern Ontario School Trustees' Association
- The Ontario Public School Trustees' Association
- The Ontario Separate School Trustees' Association

The Ontario School Trustees' Council (OSTC) is a corporation established by The Ontario School Trustees' Council Act to consider matters relating to education that are of common interest to the five member associations. The council provides a medium for communicating the agreed views of the member trustee associations to school boards, the Ministry of Education, and other groups such as the Ontario Teachers' Federation.

Since issues are perceived to be of both provincial and local concern, it is important that school boards and the Ministry of Education have ways of communicating about issues and discussing them. To this end the Trustees' Council meets with the Minister of Education several times a year to discuss the current issues of mutual concern. The Ministry provides a liaison service to the Council and the five member trustee associations.

The Ministry and trustees have additional methods of exchanging information. Trustees serve on a number of Ministry committees, including:

- the Advisory Council on Special Education,
- the Advisory Committee on Financing Elementary and Secondary Education, and
- the Advisory Committee on the Learning Materials Development Plan.

The Individual Trustee

To act as a corporate member of a school board while maintaining informed individual positions, as a responsible trustee must do, is a difficult and complex task. The individual trustee derives his/her authority through the corporate entity of the board. However, the trustee also has an active role to play as an individual. *On election, responsibility of the board member is to the electorate as a whole within the total board's jurisdiction.*

The individual trustee has an obligation to obtain all the information pertinent to questions under discussion. He or she has a responsibility to be well prepared in order to participate fully at the meetings and to make the best decision on behalf of the pupils and the ratepayers. To ensure adequate input of information, the trustee must maintain contacts within the total school board area.

Once a vote is taken, it is essential that the trustee accept the board policy; a difficult task because the public expects trustees to state their personal position.

The trustee depends heavily on the board's administrative staff, counting on their knowledge, professional and administrative skills, and a high degree of co-operation. A trustee must maintain objectivity in keeping the long term goals of the school board uppermost in the consideration of issues that arise. Immediate goals of course may change, but the ultimate purpose of the school board's existence does not.

The individual trustee has no power on his/her own; the board is a corporate entity. As in other corporate entities in society today, however, individual board members are responsible for their statements and actions. Trustees can be held personally liable if they are guilty of bad faith, neglect, or wilful or malicious use of powers.

As members of a publicly elected body, trustees are subject to an oath of office and to The Municipal Conflict of Interest Act. Conflicts of interest may arise when, for example, trustees who are employees of other boards deal with issues such as salary negotiations and matters concerning relations between the board of which they are a member and the board that employs them.

The Education Act, 1974 does not attempt to address the situations that face the trustee as an individual once he/she is elected except in the case of resignations. This lack of specific reference is an area of concern.*

* See "The Trustee - A Corporate Member" a paper presented by Mrs. Jane Dobell at the Ontario School Trustees Council Conference for Newly Elected School Trustees, January 1981.

More awareness is necessary on the part of many newly elected trustees at the outset of their term regarding the obligations, restrictions and other complexities related to the office. These are, for the most part, not appreciated by many candidates for the office of school trustee and certainly not by the electorate at large.

Conclusions and Questions

(1) General

School boards have been the local governance mechanism for elementary and secondary education in Ontario since before Confederation. Their role has become more complex as society has become more complex and more important as education has become more crucial to an urbanized industrial and post-industrial society and economy.

For more than a century, there has been legislation in Ontario outlining and delineating provincial and local powers and responsibilities respecting elementary and secondary education. The Minister and the Ministry of Education on one hand and the school boards on the other obtain their powers and responsibilities from this legislation passed by the Legislature. The structure of the legislation is such that neither the province nor the local level has an exclusive role. The school boards then are the crucial local element in this process by which the needs of a local nature and the provincial standards are welded into a program of instruction.

In considering the roles, powers and duties of trustees within this context, the committee concludes that, while other governance schemes are possible, a system of school boards, directly elected locally and distinct from other locally elected bodies, is important to retain. This structure has been proven effective historically. *The specific nature of the school board's responsibilities regarding the education of all children resident in its jurisdiction, along with the shared nature of public education between the provincial and local level is such that this responsibility is not practical to merge or combine with other municipal bodies.*

(2) School boards

One of the most important aspects of the provincial-local partnership in education is the relationship between the Ministry of education and the local boards, and the enunciation and clarification of that relationship. Since 1969, when the

units of educational administration were last modified, this relationship has developed and many real and potential difficulties have been resolved. The committee notes that the regional offices of the Ministry are a key element in keeping the partnership at its necessary productive level. The periodic meetings of the Ontario School Trustees' Council with the Minister and senior Ministry officials also play an important role in this regard.

Between the Ministry of Education and the boards there remain some areas that appear to require re-examination. Among these, the committee notes the following:

(i) At present, a fairly detailed regulation (Regulation 704/78)* has been made under The Education Act, 1974 which governs the operation of schools. There seems little doubt that a regulation outlining some specific aspects of school operation is needed to ensure necessary province-wide standards for a provincial system of education. The question remains whether school boards should be given more autonomy in the operation of schools than is now permitted under this Regulation. The potential difficulty in doing so is the possibility of wide divergence in local situations. Such diversity may have negative effects for parents and pupils.

(ii) There is some confusion regarding the division of responsibilities and roles between the Ministry and the boards. In the administrative area, it is clear the boards own and operate the schools, but the provincial government, by providing and controlling both capital and operating funds, is, in effect, always in a position to influence administrative decisions. This is probably inevitable.

The situation is less clear in the area of curricula. At certain times in the past, provincial control was the norm in this area, but since 1969 the boards have had considerable leeway in developing curricula within broad guidelines. Should there be less or more local control of curricula? On what basis would such a decision be made?

* As this document is being prepared, this regulation is undergoing a review, and as a consequence the reader may find a modified regulation to be in force. This does not alter the validity of the reference to the content of the regulation.

(iii) The committee feels that it is imperative for both the Ministry and school boards to be more specific about both the purpose of and the basis for their decisions and actions. The Ministry sends many documents to boards: these include regulations made under The Education Act, 1974 which have binding power; directives as to how certain situations are to be handled (e.g., the use of asbestos in schools); memos of clarification, proposals or information. The nature of these documents should be clearly identified and the legal or other bases for the action indicated.

The relationships among directors of education and principals of schools, their respective boards and the Ministry can also create confusion. Should the Ministry enunciate policies directly to these officials or to these officials only through the elected school boards or to board chairmen and officials at the same time?

The committee feels that Ministry documents, regardless of their intent, should be sent to school board trustees and not just to school board administrators.

(iv) Boards and individual trustees should be aware of and be cognizant of the legislative basis for the responsibility of both the boards and the Ministry. It is the responsibility of trustees to become knowledgeable about The Education Act, 1974. The committee suggests that the Ministry should assist them in this regard by preparing a layman's guide to the legislation.

(v) The problem of provincial policy versus local autonomy is a difficult one. Areas where the issue of provincial policy versus local autonomy has arisen or could arise includes facilities for French language instructional units, heritage languages programs, special education and the use of surplus school facilities. The committee notes there is need to clarify when and how provincial involvement will occur in a situation which has been a matter for local decision.

(vi) The committee notes that with the increasing complexity of society and the introduction of human rights legislation and affirmative action programs of various kinds, the responsibilities of school boards to conform to other legislation and other government bodies is growing. This makes their decisions more difficult, and it should be recognized as a factor which makes the functioning of school boards more complex.

(vii) The committee recognizes that the process by which trustees are elected falls within the jurisdiction of The Municipal Elections Act, 1977. As a consequence enumeration and election dates will be coincident with the municipal election process. However, the present administrative process by which the number of trustees required is periodically redetermined appears to need modification. At present, the school board, the body most affected by the redetermination, may not receive sufficient and advance information of this redetermination. The committee feels that the process should be altered so that school board members are informed of the process, the basis for the redetermination and the calculations performed by the municipal clerks.

(The committee recognizes that the actual method of distribution of trustees is the subject of another study. What is referred to here is the administrative process of applying whatever particular method is in place.)

(3) Individual Trustees

During the committee's considerations of the role, duties and responsibilities of school boards and trustees, it became evident that almost all the formal description of these aspects, particularly in legislation, deal with the school board as an entity. The individual trustee is rarely referred to, except in reference to such matters as qualification and resignation. This emphasis on the board as a corporate entity to the exclusion of the individual trustee is understandable as it is only the board that "acts" in an official sense.

Until recently, the same situation prevailed in companies in the private sector. However, individuals on boards of directors of companies are now subject to a number of legal obligations and other parameters regarding their powers and, particularly, their responsibilities as individual members.

A parallel situation is developing with respect to publicly elected bodies. In the case of school trustees, legal requirements such as The Statutory Powers Procedure Act, 1971, child welfare legislation, and human rights legislation place constraints on the individual trustee. It is, therefore, the committee's strong feeling that the powers and obligations of the individual trustee should be clarified and outlined in some appropriate legal framework.

In this respect the committee notes the following:

(i) The legal responsibilities and liabilities of the individual trustee need to be defined. An example of one of the few references of this type now existing is section 171(4) of The Education Act, 1974 regarding responsibility for security of moneys entrusted to board personnel.

(ii) The relationship and responsibilities of an individual trustee vis-a-vis the school board as an entity need to be more fully defined. This need is heightened by conflict-of-interest considerations, but these are not the only matters of importance. For example, does an individual trustee have some formal obligation to respect the confidential nature of discussions, including information obtained, during "in camera" sessions of committees of the board? If no such obligation now exists, should there be one, and what recourse and/or penalty should there be if it is not honoured?

II LEGISLATIVE QUALIFICATIONS OF TRUSTEES

The present system of determining the qualification of candidates for the office of school trustee is governed by sections 191 and 192 of The Education Act, 1974. The Act provides that a candidate for school trustee must be a Canadian citizen, eighteen years of age, and a resident within the jurisdiction of the board. There are a number of general disqualifications: Members of other school boards, members of municipal councils, members of the Legislature or Parliament and clerks or treasurers of a municipality are not qualified to be elected as trustees. In addition, an employee of a school board may not be a member of the same board. However, an employee of a school board may be a member of another school board except in Metropolitan Toronto.

The committee is aware of the increasing complexity arising from the current practice of permitting employees of school boards to serve on other school boards. During the past few years, legal judgements, individual members of the public, trustee associations and articles in the media have pointed out the difficulty of employees of a school board properly representing the electorate on school boards without a conflict of interest.

The committee wishes to acknowledge that the employee-trustee has a clear avenue to avoid conflict of interest under The Municipal Conflict of Interest Act, 1972; which states that "as soon as practicable after the commencement of the meeting (he shall), disclose his interest and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter, or attempt in any way to influence the voting on any such question".

The practical difficulty of adhering to this requirement is shown by the recent court judgement rendered in Ottawa regarding conflict of interest on the part of trustees of the Ottawa Board of Education who are employees of the Carleton Board of Education. Extracts from the judge's decision are included in Appendix D.

The committee is anxious to state that there is no suggestion that the employee-trustees are in any way corrupt or fraudulent. However the committee reaffirms the view that the situation is growing increasingly difficult as a result of the ever more complex nature of collective bargaining within the provisions of the School Boards and Teachers Collective Negotiations Act, 1975, as well as the implementation of collective agreements. Improved collective agreements negotiated

by the employees of one board may be used as negotiating levers on other boards. It also appears clear that certain financial and administrative decisions made by one board have an influence on other boards.

Many employee-trustees recognize that their participation on board committees considering matters such as salary, school closing, and budget represents an area of potential conflict of interest and for that reason usually do not sit on them. This in turn creates other problems - uneven distribution of trustee workload which in the smaller boards can be a serious difficulty; and the necessity of major decisions of the board being made by a small number of trustees.

The committee recognizes that the question of legal qualifications of trustees is a difficult area and some possible alternatives are discussed in the next section. However, before proceeding further the committee is anxious to clarify its perception of the eligibility of spouses of school board employees serving on school boards. The committee is fully aware that many individuals have suggested that the eligibility of spouses of board employees should be governed in the same manner as that of the employees themselves.

It is obvious from legal judgements* that a trustee whose spouse is a board employee faces considerable potential for conflict of interest. The Municipal Conflict of Interest Act, 1972, subsection 2(3) defines clearly which relationships are deemed an interest of the member: "The interest of any spouse, son, daughter or any other relative of a member of a council or local board who has the same home as such member, shall if known to the member, be deemed for the purposes of this section to be also an interest of the member."

For this committee's purposes the main question remains that of the appropriateness of the candidacy of the spouse of a board employee. On this matter the committee feels it is neither practical nor reasonable to suggest limitations beyond those in The Municipal Conflict of Interest Act, 1972.

* "Moll and Fisher (1979) 23 O.R. 2(d) 609, at 612 Robins J. speaking for the Ontario Divisional Court" see page 48 of Appendix D.

Conclusions and Questions

The committee considered the following matters:

- whether a board employee should be allowed to be a candidate for the board that employs him/her;
- whether a board employee should be allowed to be a candidate for another board;
- if a board employee is allowed to be a candidate, under what conditions;

After considerable discussion the committee reached the conclusion that the provisions of The Education Act, 1974 should be continued whereby an employee is not allowed to be a candidate for election to the board that employs him/her.

On the question of whether a board employee should be eligible to be a candidate for another board, there was a divergence of opinion. Some members of the committee feel that an employee of a board should not be eligible to be a candidate for any school board. Other members of the committee, while recognizing the potential for conflict of interest, expressed a desire to seek an alternative to outright prohibition of the right of a board employee to be a candidate for the office of trustee.

The search for alternatives led the committee to consider the similarities and differences between the legal qualifications of candidates for a school board, a municipal council and the provincial Legislature. The committee noted that both municipal employees and provincial civil servants must obtain a leave of absence to be candidates for municipal office and the Legislature respectively. Similar provisions apply to employees of colleges of applied arts and technology. Furthermore the clerk or treasurer of a municipality is not permitted to be elected to a municipal council. A senior civil servant may not engage in any political activity.

The committee is of the opinion that the present rules regarding the eligibility of board employees as candidates for trustee should be reconsidered. The Municipal Conflict of Interest Act, while applicable, does not appear to deal adequately with the current situation, in the light of the complexity of the collective negotiation process and recent legal judgements that question the role of employee-trustees.

After much discussion, the committee favours an approach whereby a board employee may be a candidate for trustee on another board provided the employee obtains a leave of absence, without pay, to be a candidate and, if elected, continues the leave of absence for the period he/she remains a trustee, with the provision that every application for such leave shall be granted. This provision is based on section 36 of The Municipal Act, relating to municipal employees. It is suggested that each board adopt a board policy concerning the terms and conditions to be applied to such leaves.

In view of the importance of this issue, the committee is most anxious that it receive full public discussion.

III REMUNERATION OF TRUSTEES

The present system of providing trustee allowances is governed by subsection (1) of section 164 of The Education Act, 1974. The Act provides that a board may pay to each member of the board a monthly allowance based on the number of pupils enrolled in the schools operated by the board. The legislated formula is as follows:

<u>Enrolment</u>	<u>Maximum Monthly Allowance</u>
Fewer than 2,000	\$100
2,000 or more but fewer than 10,000	\$200
10,000 or more but fewer than 40,000	\$400
40,000 or more	\$600

The chairman of the board may be paid an additional allowance not exceeding one-half of the regular allowance. School boards also have the authority to pay the actual travel expenses that trustees incur on board business.

In frequent meetings with the Minister, since 1974, the trustee associations have expressed displeasure with the current allowance structure. In June of 1980, the Ontario School Trustees' Council presented a brief on behalf of L'Association française des Conseils Scolaires de l'Ontario, the Association of Large School Boards in Ontario, the Northern Ontario School Trustees' Association and the Ontario Public School Trustees' Association to the Minister of Education expressing concern over the level of remuneration for school board trustees and the system of determining trustee remuneration. The Ontario Separate School Trustees Association supports the concerns of the Ontario School Trustees' Council on this issue, with the added proviso that the cost of trustee remuneration should continue to receive provincial grant support.

NOTE: This section is not applicable to the following boards: The Metropolitan Toronto Board of Education, those authorized under sections 67 and 68 of The Education Act, 1974, District School Area Boards and Isolate Roman Catholic Separate School Boards.

The Ontario School Trustees' Council recommended to the Minister of Education that, subsection 1 of section 164 of The Education Act, 1974 be repealed and replaced with a section giving individual school boards the responsibility and authority for setting trustee remuneration in their own jurisdictions, in the same manner as municipal councils presently establish the remuneration of their members.

As outlined in the brief, trustees believe that the public will support Council's request for the following reasons:

- Seven years of inflation have passed since the last review of trustee remuneration,
- Trustee workload and responsibilities have increased in response to increased societal expectations,
- In many boards remuneration has actually decreased as a result of declining enrolment,
- The formula of tying remuneration to enrolment is arbitrary and without sound rationale,
- The current level of remuneration for trustees may limit candidacy to those with personal means to enable them to serve as trustees,
- Of the three levels of government, only school boards do not set their own remuneration.

Discussion of Approaches

The committee expressed concern that the use of the word "allowance" to describe trustee remuneration is outdated and not compatible with other elected bodies. The committee recommends that the term "trustee remuneration" be used, as it is more appropriate considering the heavy demands placed on trustees.

The committee discussed the following possible approaches to the establishment of trustee remuneration.

1. that the current system be maintained but revised;
2. that each school board establish the level of remuneration and charge it against local taxes;

3. that each school board establish the level of remuneration with the funding source to be a combination of provincial grants and local taxes.

1. Revising the Current System

Historically, a schedule for trustee allowances was placed in legislation to provide support to trustees for the payment of remuneration. It is possible to maintain the present system with an amendment to update the scale of payment. However, it is probable that such a revised scale would not remain appropriate for long and that soon it would be necessary to amend the Act again.

The committee feels strongly that the responsibilities of a trustee cannot be properly assessed simply on the basis of the size of the board. All trustees are faced with the need to prepare for similar policy decisions. Therefore, a scale of payment based on enrolment appears to have no valid rationale. In addition, the present system does not provide for responsibility on the part of the locally elected trustees for decisions on remuneration.

2. Allowing each School Board to Establish the Level of Remuneration and Charge it against the Local Taxes

Allowing school boards to establish the level of remuneration by board resolution would provide for local responsibility and accountability. The fact that the total cost of the remuneration would be charged against the local ratepayer could provide a check on the process.

In Ontario there are many school boards that have a large local tax base and these school boards raise a substantial, if not the major, part of their revenue from the local assessment. Such boards could easily provide local revenue for trustee remuneration. However, it should be noted that other boards, with a low level of assessment, receive a higher portion of their revenue through provincial grants than through local taxes. These boards would find it difficult to handle the cost of remuneration charged solely against local taxes. It is clear that a system that allows boards to increase trustee remuneration with no grant support would place boards with low assessment at a significant disadvantage.

3. Allowing Each School Board to Establish the Level of Remuneration with the funding Source to be a Combination of Provincial Grants and Local Taxes

In order to provide a reasonable financial base for the provision of trustee remuneration, provincial financial support to the "recognized ordinary expenditure" portion of the provincial grant for trustee remuneration could be continued. This support would cushion any significant mill rate impact on the local ratepayer. It is assumed that such provincial support would not be open ended but would enable all school boards to establish a base level for trustee remuneration. Under such a system school boards would have the authority to establish the remuneration above the base level but any such increase would be charged against local taxes.

General Observations for All the Approaches

It should be emphasized that, regardless of the approach adopted, provision should be retained for the payment of additional remuneration for the board chairman. In addition, the committee recommends that school boards should have the authority to establish by resolution a system to reimburse a member for expenses incurred as part of trustee duties. The present provision for such reimbursement, made under section 164 of The Education Act, 1974, appears too restrictive in this regard since its only specific reference is to travel expenses.

The committee further recommends that the authority be continued for a school board to deduct a reasonable amount of a member's remuneration because of absence from regular or committee meetings of the board, as allowed in subsection 164(5) of The Education Act, 1974.

Allowing school boards to establish their own remuneration could result in significant diversity in trustee remuneration in Ontario. If such diversity is seen as a source of undue difficulty, a range could be established by way of a provincial regulation. Regular advice on the amendment of the regulation could be provided to the Minister by the Ontario School Trustees' Council.

Conclusions and Questions

The committee considered the following matters:

- whether the present system of remuneration should be maintained;
- whether the school boards themselves should have the right to establish remuneration of their members;
- whether the level of trustee remuneration should be open-ended or should be within a specified range;
- whether it is feasible to consider the trustees' remuneration as a charge solely against local taxes.

In considering the questions of establishing trustee remuneration, the committee reached a number of conclusions. First, a continuation of the present system of remuneration based on a scale established in The Education Act, 1974 is not appropriate. The committee is of the opinion that in the light of the heavy workload faced by trustees on all school boards, a scale of payment based on enrolment appears to have no valid rationale. The committee notes that, among the three levels of government, only school boards cannot set their own remuneration. In addition, the necessity of periodic revisions in remuneration due to inflation dictates the need for a flexible system of establishing trustee remuneration.

Second, the committee is in agreement that trustees, as responsible elected officials, should have the authority to establish their own level of remuneration.

With respect to whether this right should be open ended, the committee, after lengthy discussion, agrees that the remuneration level should be established by each school board which is responsible to the local electorate.

Finally, the committee recognizes that trustees would prefer to be fully accountable for their remuneration. Paying the total remuneration from local taxes would be compatible with this desire and would increase trustee accountability. However, this would be difficult for school boards with a low level of assessment.

Based on the above conclusions, the committee recommends that the minimum level of trustee remuneration be \$400 per month, which would be funded by a combination of provincial grant and local taxes. The committee also recommends that trustee remuneration in excess of the minimum level be determined by each school board and be charged entirely against local taxes.

IV STRUCTURED PARENT INVOLVEMENT

For approximately fifty years there have been formally organized parent groups in Ontario. Almost all of these were organized initially at the individual school level. A high proportion, but by no means all, are affiliated with other similar parent groups in associations at the local and/or provincial level. The three main provincial associations are the Fédération des Associations de Parents et Instituteurs, the Federation of Catholic Parent-Teacher Associations of Ontario and the Ontario Federation of Home and School Associations.

The committee notes that parental involvement in education is based at the local school level, arising naturally out of parents' overriding concern for the wellbeing of their child. This concern includes interest in the school environment, which is one of the most influential socializing experiences for the child, as well as in the academic program.

The involvement of parents and guardians in education tends to depend on, and vary greatly with, local neighbourhood conditions. Because of this, positive measures and support for the natural development of parent groups have always been considered useful and should be continued and strengthened. Certain provinces and school boards have "required" school committees and compulsory parent involvement, but the results have not been considered particularly successful.

There are several disadvantages to legislated or required parental involvement committees. First, legislation does not increase interest where it is low, and legislation is not needed where interest is high. The process can actually interfere with the functioning of school or board by requiring involvement of those not interested, or by permitting those with a particular point of view to gain and keep control without necessarily having to be elected. This can also confuse or obstruct the governance and administration process of the elected board or the principal.

However, it must be recognized that where legislated parental involvement exists, it may have arisen from a refusal of boards or school administration to recognize the legitimate right of parents to become involved in the education of their children. What is required is some process that assures and facilitates the forming of parent groups when the interest exists, rather than requiring it in every case.

It is important to understand the various kinds of parent groups that can develop. There are local groups that spring up because of "local causes". Perhaps the most common is the forming of a group to oppose a school closing. Another type of parental group is the group formed of parents facing a similar individual circumstance. Frequently not all parents in one locality are involved, but since parents in other locales face a similar situation, the organization tends to be centered on the board, the province, or even the national level. Organizations of parents of children with learning difficulties or parents concerned with language training are examples. Both of these types of groups tend to be single-focus and tend to remain active as long as those involved see a need to promote their particular interest.

The types of parent group considered here include groups such as Home and School and Parent-Teacher Associations, which are much more diverse in their concerns. Such parent groups are concerned with keeping the lines of communication open between the school, the home, and the board, helping to improve the school (raising money, providing volunteer help, etc.), and possibly interpreting community feelings to help the school administration. Obstructionism or lack of enthusiasm by either the parents or the school administration can detract from the success of such a group, or prevent it from forming or continuing.

Conclusions

The committee feels strongly that parental involvement in schools is very important. However, a legislated requirement to have parent committees is counter-productive.

The committee suggests that initiatives should be undertaken to encourage the formation of broadly based local parent groups to work with the school and the board, and to ensure that the administration recognizes and takes seriously the parent group's involvement.

In this vein the committee has reached the following conclusions:

- The Ministry of Education should make it clear that it supports and encourages the formation of broadly based local school or area parent groups. This might be done by sending memoranda to all boards and schools reiterating that such groups have a right to

form and that co-operation is expected from the school and board administrations in integrating each school with the community and in improving the school environment. The types of rights of parent groups would include the right to meet in the school and the right to meet with the principal.

- Any necessary legislative changes should be made to assure that it is legitimate for a school board to provide financial or staff support or technical assistance to groups such as a Home and School or Parent-Teacher association in its jurisdiction, should the board decide to do so.
- Volunteer involvement with schools and boards is something to be encouraged. In order to remove obstacles to this, steps should be taken to assure that boards may pay the expenses of volunteers on board business in the same way that the expenses of members of the board or its staff are paid. This is already possible under section 164(6) of The Education Act, 1974, but should be made clearer so that all boards are aware of it. In addition, boards should take steps to ensure that volunteers in schools or on board business are protected under liability insurance. This is already done by some school boards.

APPENDIX A

BACKGROUND TO COMMITTEE FORMATION

Over the years since The Education Act, 1974 was passed by the Legislature, a number of concerns have been expressed concerning the role, powers and duties of school boards and trustees by organizations and individuals interested in the elementary and secondary education system in Ontario. (See Note on page 27.)

After a meeting on February 18, 1981, with the Ontario School Trustees' Council the Deputy Minister of Education struck a committee of twelve members of representative trustees and parents from the various trustee and parent-teacher/home and school organizations in the province along with Ministry officials. (The membership and their parent organizations are listed on the last page of this appendix.)

The task of the committee was to prepare a discussion paper for public release that would address some of the issues raised in section 5.13 (p. 53) of "Issues and Directions" and a number of closely related items, viz.,

1. the role, powers and duties of the trustees,
2. the feasibility of establishing school committees of trustees and parents with powers defined in legislation to share in the governance of individual schools,
3. the qualifications of trustees (including the conflict of interest issue),
4. the remuneration of trustees,
5. any other matters which in the committee's opinion are closely related to any of the above.

The discussion paper was to be completed by May 31, 1981.

NOTE: As a result of the declining enrolment in Ontario schools in recent years a study was conducted under the direction of the late Dr. Robert W. B. Jackson, former Director of the Ontario Institute for Studies in Education. The Final Report of the Commission on Declining School Enrolments in Ontario (CODE) touched on many aspects of the education scene in Ontario.

A response to CODE and to other issues related to the educational system was completed in 1980 and the Ministry publication, "Issues and Directions", was circulated to all organizations in the province interested in educational matters and made available to the public. Reactions to the Ministry's document were invited.



Office of the
Deputy Minister

Ministry of
Education

Ministry of
Colleges and
Universities

Mowat Block
Queen's Park
Toronto, Ontario
M7A 1L2
416/965-2605

February 19, 1981

Mr. W. J. Hillyer
Chairman
Ontario School Trustees'
Council
2 Bloor Street West
Suite 500
Toronto, Ontario
M4W 3E2

Dear Mr. Hillyer:

This is further to our discussion on Wednesday, February 18 to formally invite the Ontario School Trustees' Council to nominate a table officer from each affiliate of the Council, and an officer of the Council itself to a committee to examine the role of the trustee.

This committee, to be chaired by Mr. David Ferguson, Director, Policy Analysis and Legislation Branch, will include as well as trustees, representatives of parents and Ministry officials.

The task of the committee is to direct the preparation of a discussion paper for public release that would address some of the issues raised in section 5.13 (p. 53) of "Issues and Directions" and a number of closely related items, vis.,

1. the role, powers and duties of the trustees
2. the feasibility of establishing school committees of trustees and parents with powers defined in legislation to share in the governance of individual schools
3. the qualifications of trustees (including the conflict of interest issue)

4. the remuneration of trustees
5. any other matters which in the committee's opinion are closely related to any of the above.

As I indicated yesterday, we would like to make an early start and we are suggesting a reporting date for the committee of May 31, 1981.

I appreciated yesterday's discussion with the Council on this matter and your offer to give immediate consideration to this request.

Yours sincerely,

H. K. Fisher
Deputy Minister

Committee Members

The Ontario School Trustees' Council

Mrs. M. Amyotte
Mrs. L. Beauchamp
Mrs. T. Cousineau
Mrs. H. Dickson
Rev. K. Kiddell
Mr. J. Switzer

Alternates: Mr. J. Aspen
Mr. E. Checkeris

Federation of Catholic Parent-Teacher Associations of Ontario

Mr. V. Blanchard

Alternate: Mr. R. Fera

Fédération des Associations de Parents et Instituteurs

Mr. W. Sarazin

Ontario Federation of Home and School Associations Inc.

Mrs. M. May

Ministry of Education

Mr. D. Ferguson (Chairman)
Mr. D. Johnston
Mr. J. Sullivan
Mr. D. Bethune (Secretary)

APPENDIX B

BACKGROUND TO THE ORGANIZATION OF THE EDUCATIONAL SYSTEM

While many Ontarians are familiar with the provincial education system at the elementary and secondary school level as it is now, or was during their own school days, they may not be aware of the system's evolution from the early nineteenth century to the present in terms of organizations and modus operandi.

What follows is a brief historical outline of the system. Readers who wish to acquaint themselves more fully with the history of education in Ontario should refer to specific reports and sources, such as:

- The Report of the Royal Commission on Education in Ontario, 1950, (Toronto: King's Printer, 1950).
- W. G. Fleming, Ontario's Educative Society, Vols I - VII, (Toronto: University of Toronto Press, 1971).

The first important legislative involvement in education in what is now Ontario was an act passed in 1816 providing for operation of common (i.e., elementary) schools. It provided for three persons to be elected as trustees for a local school. There was some funding for education from the provincial level, but essentially the act provided for local financing and local control of the school.

From 1844 to 1875 Egerton Ryerson was Superintendent of Education in Upper Canada, later Ontario, and made many changes. During this period, regulations, courses of study, and authorized textbooks were generally controlled centrally, while the hiring of teachers and the administration of schools was under local control. In the 1850s, secondary schools were set up.

In 1841 statutory provision was made for the first time for denominational schools in Upper and Lower Canada. The principles established in these statutory provisions, in respect of denominational schools, were successively altered and expanded

by the Legislature during the 1840s, 1850s and 1860s, leading finally to the Scott Act of 1863 - "an Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools". This Act was in place at the time of Confederation.

The British North America Act of 1867 dealt with two important aspects of education in section 93 (reproduced at the end of this appendix) which is devoted to education. It specifically gave to each provincial legislature the exclusive power to make laws in relation to education in that province, thus identifying education as a provincial field of competence. Section 93 also provided guarantees to Catholic separate school supporters in Ontario that nothing should prejudicially affect any of their rights or privileges existing at Confederation. Thus, since before Confederation, Ontario has had tax-supported schools, not only for the majority who supported a system open to all, later referred to as the public school system, but also for those Catholics who were separate school supporters.*

In 1871, "common" schools were renamed public schools, and made free and open to all. In 1875 a Minister of Education was appointed to the provincial cabinet for the first time. From 1875 until the 1920s and beyond, the availability of education became more nearly universal. In 1921 the Adolescent School Attendance Act made school attendance compulsory to the age of sixteen, with certain exemptions.

School Administration, always under local control, evolved, beginning in the late 19th century, with larger units replacing smaller ones. However, a large number of locally elected administrative units remained, and elementary school responsibilities remained generally distinct from secondary school responsibility. The following three tables, based on 1948-49 data and developed for the Ontario Royal Commission on Education in Ontario, 1950, indicate this. It should be noted that the vast majority of the boards in rural areas continued to have only three members.

* In regions where Catholics were the majority, some Protestant separate school boards were established. A very small number of them still exist.

TABLE 1
UNITS FOR THE ADMINISTRATION OF ELEMENTARY EDUCATION ONLY^a

PUBLIC			
RURAL		URBAN	
1. <i>School Sections</i>		1. <i>School Sections</i>	
(a) Rural public school sections composed of part of one township	2,149	(a) Union school sections ^b	26
(b) Rural public school sections composed of all of one township	1	(i) including a town	47
(c) Union school sections	588	(ii) including a village	
(d) Consolidated school sections	15	(b) Consolidated sections	1
(e) Township school areas	481	2. <i>Urban Municipalities</i>	
(f) Public school sections established by Minister	24	(a) Cities	6
2. <i>Improvement Districts</i>	12	(b) Separated towns	3
TOTAL RURAL	3,270	(c) Towns	69
		(d) Villages	82
		TOTAL URBAN	234
TOTAL PUBLIC: 3,504			
SEPARATE			
ROMAN CATHOLIC		PROTESTANT	
RURAL	URBAN	RURAL	URBAN
1. "Sections" composed of part of one or more townships	517	1. Cities	27
		2. Metropolitan areas	1
2. Union "sections" (Operating more than one "section")	21	3. Separated towns	7
TOTALS	538	4. Towns	82
		5. Villages	18
TOTAL ROMAN CATHOLIC SEPARATE SCHOOL UNITS	673		
		1. Schools sections conterminous with public school sections	2
		2. Towns	1
		2. Villages	1
			—
		—	—
		2	2
TOTAL PROTESTANT SEPARATE SCHOOL UNITS			
			4
TOTAL SEPARATE: 677			
TOTAL ELEMENTARY ONLY: 4,181			

^aCompiled by the Commission from recent data (1948-49).

^bClassed also as urban municipalities.

Source: Report of the Royal Commission on Education in Ontario, 1950 (Toronto: King's Printer, 1950), p 218.

TABLE 2
UNITS FOR THE ADMINISTRATION OF SECONDARY EDUCATION ONLY^a

HIGH SCHOOL DISTRICTS		CONTINUATION SCHOOL DISTRICTS	
Composition	Total	Composition	Total
1. CREATED BY LEGISLATION		1. CREATED BY ONE PUBLIC ELEMENTARY SCHOOL AUTHORITY	
(a) Cities	4	(a) One town	10
(b) Separated towns	12	(b) One village	24
	— 16	(c) One rural public school section	25
2. CREATED BY COUNTY COUNCILS		(d) One township school area	9
(a) One town	8	(e) One consolidated school section	2
(b) One village	11	(f) One rural union school section	7
(c) One township	23	(g) One rural public school section in a township school area	24
(d) Part of one township	4	(h) One improvement district	1
(e) One rural school section	2	(i) One village plus one or more rural school sections	5
(f) All or part of more than one township	10	(j) One town plus one or more rural school sections	1
(g) One town plus all or part of one or more townships	21		— 108
(h) One village plus all or part of one or more townships	16	2. CREATED BY ONE SEPARATE ELEMENTARY SCHOOL AUTHORITY	
(i) A whole county	1	One town	2
(j) A whole county minus one township	1		— 2
(k) More than one town plus townships	1	3. CREATED BY MORE THAN ONE ELEMENTARY SCHOOL AUTHORITY	
(l) More than one village plus townships	1	(a) One public school section and one Roman Catholic separate school "section"	1
(m) One or more towns, one or more villages, and all or part of one or more townships	22	(b) One township school area and one Roman Catholic separate school "section"	1
	— 133	(c) One township school area and one Roman Catholic separate school union "section"	1
3. CREATED BY JOINT ACTION OF THE COUNCILS OF A CITY OR SEPARATED TOWN AND ONE OR MORE CITIES, SEPARATED TOWNS OR COUNTIES		(d) Part of a township school area and one public school section	1
(a) One separated town and parts of three counties	1		— 4
(b) One separated town and parts of a county	1		
(c) Two cities	1		
4. CREATED BY ONE OR MORE MUNICIPAL COUNCILS IN UNORGANIZED TERRITORY			
(a) One town	1		
(b) One village	1		
(c) One township	3		
(d) One town plus all or part of one or more townships	3		
	— 8		
TOTAL HIGH SCHOOL DISTRICTS	160	TOTAL CONTINUATION SCHOOL DISTRICTS	114
TOTAL SECONDARY ONLY: 274			

^aCompiled by the Commission from recent data (1948-49).

Source: Report on the Royal Commission on Education in Ontario, 1950 (Toronto: King's Printer, 1950), p 225.

TABLE 3
UNITS FOR THE ADMINISTRATION OF PUBLIC ELEMENTARY
AND SECONDARY SCHOOLS^a

Composition	Total
1. UNITS CREATED PURSUANT TO PROVISIONS OF <i>The Boards of Education Act</i>	
(a) One city	23
(b) One separated town	4
(c) One town	29
(d) One village	9
(e) One union public school section containing a town	8
(f) One union public school section containing a village	6
	— 79
2. CREATED BY SPECIAL ACT	
One township	4
	— 4
3. CREATED BY THE LIEUTENANT-GOVERNOR IN COUNCIL	
One township	1
	— 1
TOTAL UNITS	84

^aCompiled by the Commission from recent data (1948-49).

Source: Report of the Royal Commission on Education in Ontario, 1950 (Toronto: King's Printer, 1950), p 227.

A large number of voluntary consolidations occurred in the 1950s and 1960s, but in 1968 the provincial government undertook to establish a series of large consolidated and integrated administrative units for public and separate school education across Ontario. One or more counties are the most frequent basis for these units, but some cities have their own boards. In some areas, due to local conditions, the system has been modified to suit the perceived requirements.

The compulsory reorganization came into effect on January 1, 1969, except in Ottawa-Carleton, where it became effective one year later. The units erected in 1968 remain in effect today, largely unchanged except for minor modifications. Generally, each unit has fourteen to twenty trustees, but in certain cases there are in excess of twenty. Because there are no tax supported Catholic schools beyond Grade 10, legislation provides for separate school supporters to be elected to school boards operating secondary schools.

The following table outlines the school board structure as it presently exists.

Table 4

Number of School Boards by Region – January 1, 1981/
Nombre de conseils scolaires par région – 1^{er} janvier 1981

	Northwestern/ Nord-Ouest	Midwestern/ Centre-Nord	Northeastern/ Nord-Est	Western/ Ouest	Central/ Centre	Eastern/ Est	Total
Boards of Education/ Conseils scolaires	9	9	10	12	28	9	77
County and District Roman Catholic Separate/ Conseils des écoles séparées catholiques de comté et de district	6	5	7	9	15	7	49
Secondary School Board/ Conseil d'école secondaire				1			1
District School Area Boards (Public Schools)/ Conseils scolaires de district (écoles publiques)	16	6	7				29
Roman Catholic Separate/ Conseils des écoles séparées catholiques	3	5	1		1		10
Protestant Separate/ Conseils des écoles séparées protestantes					1	1	2
Department of National Defence/ Ministère de la Défense nationale	1	1	2	1	3	3	11
Treatment Centres/ Centres de traitement				3	4	1	8
Hydro/ Hydro				1			1
Total	35	26	29	25	52	21	188

Source: Directory of School Boards, 1981 (Toronto:
Ministry of Education, 1981), p 17.

EXTRACT FROM THE BNA ACT

Legislation
respecting
Education.

Education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
- (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
- (3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:
- (4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section. (43)

APPENDIX C

Sections 146 and 147 of The Education Act, 1974

PART VI

BOARDS

Duties and Powers

146. Every board shall,

Duties of
boards:

1. appoint a secretary and a treasurer or a secretary-treasurer who, in the case of a board of not more than five elected members, may be a member of the board;
2. take proper security from the treasurer or secretary-treasurer;
3. give the necessary orders on the treasurer for payment of all moneys expended for school purposes and of such other expenses for promoting the interests of the schools under the jurisdiction of the board as may be authorized by this Act or the regulations and by the board;
4. fix the times and places for the meetings of the board and the mode of calling and conducting them, and ensure that a full and correct account of the proceedings thereat is kept;
5. establish and maintain a head office and notify the Ministry of its location and address and notify the Ministry of any change in the location or address of the head office within ten days of such change;
6. provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the board;
7. keep the school buildings and premises in proper repair and in a proper sanitary condition, provide suitable furniture and equipment and keep it in proper repair, and protect the property of the board;
8. make provision for insuring adequately the buildings and equipment of the board and for insuring the board and its employees and volunteers who are assigned duties by the principal against claims in respect of accidents incurred by pupils while under the jurisdiction or supervision of the board;
9. ensure that every school under its charge is conducted in accordance with this Act and the regulations;

- | | |
|--|---|
| school open | 10. keep open its schools during the whole period of the school year determined under the regulations, except where it is otherwise provided under this Act; |
| appoint principal and teachers | 11. appoint for each school that it operates a principal and an adequate number of teachers, all of whom shall be qualified according to this Act and the regulations; |
| provide textbooks | 12. provide, without charge, for the use of the pupils attending the school or schools operated by the board, the textbooks that are required by the regulations to be purchased by the board; |
| vehicle insurance

R.S.O. 1970,
cc. 224.392 | 13. where it furnishes transportation for pupils in a vehicle that is owned by the board, provide and carry with an insurer licensed under <i>The Insurance Act</i> for each such vehicle at least the amount of insurance that is required to be provided in respect of such a vehicle by the licensee of a school vehicle under <i>The Public Vehicles Act</i> ; |
| report children not enrolled | 14. ascertain and report to the Ministry at least once in each year in the manner required by the Minister the names and ages of all children of compulsory school age within its jurisdiction who are not enrolled in any school or private school and the reasons therefor; |
| reports | 15. transmit to the Minister all reports and returns required by this Act and the regulations; |
| statement of sick leave credits | 16. issue to an employee, upon the termination of his employment with the board, a statement of the sick leave credits standing to his credit with the board at the time of such termination. 1974, c. 109, s. 146; 1976, c. 50, s. 21. |
| Powers of boards. | 147.—(1) A board may, |
| committees | 1. appoint such committees as it considers expedient; |
| appoint employees | 2. subject to Part X, appoint and remove such officers and servants and, subject to Part IX, appoint and remove such teachers, as it considers expedient, determine the terms on which such officers, servants and teachers are to be employed, prescribe their duties and fix their salaries, except that in the case of a secretary of a board who is a member of the board, the board may pay only such compensation for his services as is approved by the electors at a meeting of the electors; |

3. permit a principal to assign to a person who volunteers ^{voluntary assistants} to serve without remuneration such duties in respect of the school as are approved by the board and to terminate such assignment;
4. appoint supervisors of the teaching staff for positions ^{supervisors} that are provided for in any Act or regulation administered by the Minister and every appointee shall hold the qualifications and perform the duties required in the Act or regulations;
5. appoint one or more, <sup>psychiatrist
or
psychologist</sup>
 - i. psychiatrists who are on the register of specialists in psychiatry of The Royal College of Physicians and Surgeons of Canada or of the College of Physicians and Surgeons of Ontario,
 - ii. psychologists who are legally qualified medical practitioners or hold a certificate of registration under *The Psychologists Registration Act* ^{R.S.O. 1970, c. 372}.
6. determine the number and kind of schools to be ^{schools and attendance areas} established and maintained, and the attendance area ^{areas} for each school;
7. provide instruction in courses of study that are ^{courses of study} prescribed or approved by the Minister, developed from curriculum guidelines issued by the Minister or approved by the board where the Minister permits the board to approve courses of study; 1974, c. 109, s. 147 (1), pars. 1-7.
8. in lieu of purchasing a computer or system of ^{computer programming} computer programming, enter into an agreement for the use thereof by the board; 1976, c. 50, s. 22 (1).
9. operate the school ground as a park or playground ^{playgrounds, parks, rinks} and rink during the school year or in vacation or both, and provide and maintain such equipment as it considers advisable, and provide such supervision as it considers proper, provided the proper conduct of the school is not interfered with;
10. organize and carry on gymnasium classes in school ^{gymnasiums} buildings for pupils or others during the school year or in vacation or both, and provide supervision and training for such classes, provided the proper conduct of the school is not interfered with;

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| milk | 11. purchase milk to be consumed by the pupils in the schools under the jurisdiction of the board during school days in accordance with the terms and conditions prescribed by the regulations; |
| provision
of supplies.
etc. | 12. provide school supplies, other than the textbooks that it is required to provide under paragraph 12 of section 146, for the use of pupils; |
| libraries | 13. establish and maintain school libraries and resource centres; |
| kinder-
gartens.
junior
kinder-
gartens | 14. establish kindergartens and junior kindergartens; |
| signatures
mechanically
reproduced | 15. provide that the signature of the treasurer and of any other person authorized to sign cheques issued by the treasurer may be written or engraved, lithographed, printed or otherwise mechanically reproduced on cheques; |
| membership
fees and
travelling
expenses | 16. pay the travelling expenses and membership fees of any member of the board or of any teacher or officer of the board, incurred in attending meetings of an educational association and may make grants and pay membership fees to any such organization; |
| legal costs | 17. pay the costs, or any part thereof, incurred by any member of the board or by any teacher, officer or other employee of the board in successfully defending any legal proceeding brought against him, <ol style="list-style-type: none">i. for libel or slander in respect of any statements relating to the employment, suspension or dismissal of any person by the board published at a meeting of the board or of a committee thereof, orii. for assault in respect of disciplinary action taken in the course of duty; |
| invest funds

R.S.O. 1970.
c. 470 | 18. invest funds received from an insurance claim, gift, legacy or sale of property in such securities as a trustee may invest in under <i>The Trustee Act</i> ; |
| idem | 19. invest moneys not required immediately by the board in bonds, debentures or other evidences of indebtedness of, or guaranteed by, the Government of Canada or the Province of Ontario, in term deposits with any chartered bank or in term deposits with, or guaranteed investment certificates or debentures |

of, any trust company or loan corporation that is registered under *The Loan and Trust Corporations Act*, or lend such moneys to any municipality or board by way of promissory note of the municipality or board, provided that the bonds, debentures or other evidences of indebtedness, term deposits, guaranteed investment certificates or promissory notes, become due and payable before the moneys invested therein are required by the board, and all interest thereon shall be credited to the fund from which the moneys are invested;

20. notwithstanding any other Act, borrow, for any purpose for which the board has authority to spend money, any moneys in any fund established by the board that are not immediately required by the board for the purposes of such fund, but such borrowing shall not extend beyond the term of office of the members of the board and, where secondary school moneys are borrowed for public school purposes or public school moneys are borrowed for secondary school purposes, the board shall pay interest to the fund from which such moneys are borrowed at a rate not less than that being earned by the fund at the date of borrowing;
21. subject to the provisions of this Act and the regulations, fix the fees to be paid by or on behalf of pupils, and the times of payment thereof, and when necessary enforce payment thereof by action in the small claims court, and exclude any pupil by or on behalf of whom fees that are legally required to be paid are not paid after reasonable notice;
22. permit the school buildings and premises and school buses owned by the board to be used for any educational or other lawful purpose;
23. provide for surgical treatment of children attending the school who suffer from minor physical defects, where in the opinion of the teacher and, where a school nurse and medical officer are employed, of the nurse and medical officer, the defect interferes with the proper education of the child, and include in the estimates for the current year the funds necessary for cases where the parents are not able to pay, provided that no such treatment shall be undertaken without the consent of the parents or guardian of the child;

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| cadet corps | 24. establish and maintain cadet corps; |
| athletics | 25. provide for the promotion and encouragement of athletics and for the holding of school games; |
| activities | 26. provide, during the school year or at other times, activities and programs on or off school premises, including field trips, and exercise jurisdiction over those persons participating therein; |
| guidance | 27. appoint one or more teachers qualified in guidance according to the regulations to collect and distribute information regarding available occupations and employments, and to offer such counsel to the pupils as will enable them to plan intelligently for their educational and vocational advancement; |
| public lectures | 28. conduct free lectures open to the public and include in the estimates for the current year the expenses thereof; |
| summer schools | 29. establish summer schools for pupils; |
| courses for teachers | 30. establish and conduct during the school year courses for teachers; |
| evening classes | 31. establish evening classes; |
| erect fences | 32. erect and maintain any wall or fence considered necessary by the board for enclosure of the school premises; |
| school fairs | 33. contribute toward the support of school fairs; |
| student activities | 34. authorize such school activities as pertain to the welfare of the pupils and exercise jurisdiction in respect thereof; |
| cafeteria | 35. operate a cafeteria for the use of the staff and pupils; |
| records management | 36. institute a program of records management that will, subject to the regulations in respect of pupil records, <ul style="list-style-type: none"> i. provide for the archival retention by the board or the Archivist of Ontario of school registers, minute books of the board and its predecessors, documents pertaining to boundaries of school sections, separate school zones and secondary school districts, original assessment and taxation records in the possession |

- of the board and other records considered by the board to have enduring value or to be of historical interest, and
- ii. establish, with the written approval of the auditor of the board, schedules for the retention, disposition and eventual destruction of records of the board and of the schools under its jurisdiction other than records retained for archival use;
 37. employ and pay teachers, when so requested in writing by a charitable organization having the charge of children of school age, for the education of such children, whether such children are being educated in premises within or beyond the limits of the jurisdiction of the board, and pay for and furnish school supplies for their use;
 38. employ and pay teachers to conduct an education program in a juvenile detention and observation home established under *The Provincial Courts Act*, R.S.O. 1970, c. 369^a a psychiatric facility as defined in the regulations and a facility designated under *The Developmental Services Act*, 1974, c. 2^b in which an educational program is not provided by the Ministry, provide instructional supplies and consultative help for the pupils therein and permanent improvements for the classrooms connected therewith;
 39. provide for maternity leave for a teacher, not exceeding two years for each pregnancy;
 40. establish, subject to the regulations, special education programs to provide special education services for children who require such services;
 41. when requested by the board of a cerebral palsy treatment centre school, a crippled children's treatment centre school, a hospital school or a sanatorium school, and with the approval of the Minister, by agreement, assume the assets and liabilities of such board and continue to operate such a school, and, upon the effective date of the agreement between the two boards, the board making the request is dissolved;
 42. where a recreation committee or a joint recreation committee has been appointed for territory without municipal organization within the jurisdiction of

the board, exercise the powers and duties of a municipal council with respect to preparing estimates of the sums required during the year for the purposes of the committee or joint committee, and levying rates and collecting taxes for such purposes on the rateable property supporting the board in such territory, and where such a joint recreation committee has been appointed, apportion the costs of such committee by agreement with the other board concerned;

agreement
for provision
and control of
recreational
facilities

43. with the approval of the Minister, enter into an agreement with a university, college of a university, or the board of governors of a polytechnical institute or of a college of applied arts and technology in respect of the provision, maintenance and use of educational or recreational facilities on the property of either of the parties to the agreement; 1974, c. 109, s. 147 (1), pars. 9-43.

election
recounts
1977, c. 62

44. pass a resolution referred to in subsection 2 of section 83 of *The Municipal Elections Act, 1977*; 1974, c. 109, s. 147 (1), par. 44; 1978, c. 44, s. 25.

insurance

45. provide for insurance against risks that may involve pecuniary loss or liability on the part of the board, and for paying premiums therefor. 1976, c. 50, s. 22 (2).

Collection
of rates in
territory
without
municipal
organization
by action

- (2) In addition to any other remedy possessed by a board in territory without municipal organization for the recovery of rates imposed under the authority of this Act, the board, with the approval of the Minister, may bring an action in a court of competent jurisdiction for the recovery of any rates in arrear against the person assessed therefor. 1974, c. 109, s. 147 (2).

APPENDIX D

EXTRACTS FROM REASONS FOR JUDGEMENT

IN THE COUNTY COURT OF THE JUDICIAL DISTRICT OF
OTTAWA-CARLETON

IN THE MATTER OF The Municipal Conflict of Interest Act 1972,
S.O. 1972, Chapter 142, Section 2, Sub-Section 1, and amendments
thereto

B E T W E E N:

MARY GILMOUR, DENISE MATTE, MICHAEL MCKENNA,
SANDRA GOLDSTEIN, LUCIEN BRADET, ROBERT BOURDON,
ODILE GERIN, GORDON HUTCHISON and DOLORES CAVALERO

Applicants

A N D:

THEODORE C. BEST and WILLIAM H. HARBACK

Respondents

Appearances:

David W. Scott, Esq., Q.C. Counsel for the Applicants

Kenneth C. Binks, Esq., Q.C. Counsel for the Respondent
Theodore C. Best

John P. Nelligan, Esq., Q.C. Counsel for the Respondent
William H. Harback

Reasons for Judgement

HIS HONOUR JUDGE HECTOR SOUBLIERE:

This is an application by way of originating notice brought pursuant to S. 4 ss 1 of The Municipal Conflict of Interest Act, 1972 for a determination of the question of whether or not Theodore C. Best and William H. Harback [trustees on the Ottawa Board of Education (O.B.E.), were in conflict of interest]

.....

.....The respondent Best in addition to being a trustee of the OBE is a full-time employee of the Carleton Board of Education (hereinafter referred to as the CBE), in his capacity as principal of Century Public School located in the regional municipality of Ottawa-Carleton. The respondent Harback is equally a trustee of the OBE and a full-time employee of the CBE in his capacity as Head of the Department of Guidance Counselling for Sir Robert Borden High School.....

.....The relevant sections of the Act are the following:

2. (1) Where a member of a council or of a local board, either on his own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect,

- (a) in any contract or proposed contract with the municipality or local board, as the case may be;
- (b) in any contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board; or
- (c) in any other matter in which the council or local board is concerned.

and is present at a meeting, including a committee or other meeting, of the council or local board at which the contract, proposed contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclose his interest and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter, or attempt in any way to influence the voting on any such question.

1. (3) For the purposes of this Act, a member of a council or of a local board has an indirect pecuniary interest in a contract or proposed contract with the municipality or local board or any contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board or in any other matter in which the council or local board is concerned, as the case may be:

- (b) if he is a partner of a person, or is in the employment of a person or body,

- (i) with whom the contract is made or is proposed to be made, or
- (ii) that has an interest in a contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board, or
- (iii) that has an interest in any other matter in which the council or local board is concerned.

In the recent decision of Re: Moll and Fisher (1979) 23 O.R. (2d) 609, at 612 Robbins J. speaking for the Ontario Divisional Court, states:

"The obvious purpose of the Act is to prohibit members of councils and local boards in engaging in the decision making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the Statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the Statute. And I should say at once, then insofar as this case is concerned, there is no suggestion that the appellants acted out of any improper motive or lack of good faith.

This enactment, like all conflict of interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgement of even the most well meaning man and woman may be impaired when their personal financial interests are affected."

.....[The defence was] There were no contracts that would be affected or reasonably likely would be affected. There was no likelihood the government would adopt the recommendations made by the OBE and that therefore it is pure speculation that all matters under consideration by the board at the time were such that a contract or a proposed contract that is reasonably likely to be affected would occur. I do not share this view; a board can only speak by its resolutions and in this case resolutions were passed. These were matters in which both local boards, the OBE and the CBE were concerned, and their interests as employees of CBE triggered the application of the relevant sections.

It is further asserted on their behalf that there is no evidence that any pecuniary loss or interest might affect the respondents and for me to accept this would be speculation at best. For the reasons already stated I reject this proposition as well. Suffice it to say that if there had been an amalgamated board, things might well have been different for the respondents in their positions as employees of the CBE. The extent of the interest, no matter how trifling, is of no consequence. Indeed, that there may well be such an effect, is found in the answers of the respondents on their own crossexamination.

In essence, the defence of the respondent Best is that he did not act to his advantage, nor has he done so in the past but in fact he has at times, acted to his economic disadvantage. Harback pleads that his opposition to amalgamation is well known and was instrumental in his election and he also did not act to this economic advantage. Each has reviewed his own conduct and found it free of blame and each has therefore absolved himself. The legislation in my mind is a recognition that many important initial attitudes and beliefs are acquired unconsciously and that people will interpret events according to these perceptions, accepting what is consistent and blocking out the rest, thereby persevering and continuing to believe in the soundness of those beliefs in the face of overwhelming evidence to the contrary. This is particularly so where there are pecuniary interests which affect initial beliefs. What the law is seeking is a person acting independently, and being free from and clear of any preconceived concepts or beliefs, tainted with pecuniary interest. A statement made or a judgement formed in a fear of self-interest is no less distorted than one made or formed in the hope of self-interest.

There is no suggestion of corruption or fraudulent benefits on the part of the respondents. Economic benefit is symptomatic of the illness; it is not the illness itself. It is but one of the elements albeit an important one, tending to prove the existence of a conflict of interest. What the law seeks to excise is the cancer itself, i.e. the conflict of interest. As stated, the character and morality of the respondent is not in issue here. In such context, the respondents have simply failed to perceive and grasp the nature of the problem. Simply put, the issue is not, given a conflict of interest, did they act to their benefit, but rather, did they act at all. In other words the question is not the rectitude of their conduct in the face of a conflict of interest but indeed it is the very existence of a conflict of interest. If there was such a conflict, their duty was clear: to disclose interest and to refrain from further participation. This they failed to do and therein did they breach the statute, no more and no less. I therefore find that the respondents were in conflict of interest on the 3rd day of May, 1979, on all of the grounds relied upon by the applicants.

Having said that, I further find that the respondents in this case did not consciously participate and vote in these discussions out of economic self-interest. Harback had clearly stated his position and indeed stressed it at the time of his election; Best on his own evidence states that he has voted against his economic interest in voting against higher salaries for teachers when he felt the raises proposed were exorbitant. One must question his right to vote at all in matters of teachers' salaries but such did not enter into his mind at the time and this is not before me. But it might perhaps here be appropriate for me to say that however inestimable the services of teachers as school board members have been in the past, I see their role as being increasingly limited to assisting our educational system in a manner other than as board members

